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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HELGA SIEG,

Plaintiff and Respondent,

v.

STUART A. WRIGHT,

Defendant and Appellant.

B146144

(Los Angeles County  
Super. Ct. No. LS008846)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Michael J. Farrell and Anthony J. Mohr, Judges. Affirmed.

Barry M. Orlin for Defendant and Appellant.

Bergkvist, Bergkvist & Carter and Paul J. Carter for Plaintiff and Respondent.

## INTRODUCTION

Stuart A. Wright, individually and doing business as Stuart A. Wright & Associates Insurance Services, appeals the judgment confirming an arbitration award and a later award of attorney's fees by the Los Angeles Superior Court. The appeal is made on the grounds that the arbitrator was without subject matter jurisdiction and in violation of the arbitration rules contained in Code of Civil Procedure<sup>1</sup> sections 1280 through 1293.2.

## STATEMENT OF PROCEDURAL AND HISTORICAL FACTS

Helga Sieg (Respondent or Sieg) is a career insurance agent. Stuart A. Wright (Appellant) operates an insurance agency. On or about January 1, 1988, Sieg entered into a contract whereby she became an insurance agent in appellant's office. The employment contract contained the following arbitration provisions:

"16. Disputes/Arbitration. Except with respect to paragraph 11<sup>2</sup> pertaining to Sieg's right to seek injunctive relief and an accounting of profits or benefits for any breach or violation of said paragraph 11, *all disputes under this agreement which are not promptly disposed of by mutual agreement will be submitted to binding arbitration* to be held in Los Angeles, California and conducted according to the rules of the American Arbitration Association."

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<sup>1</sup> All further undesignated statutory references are to the Code of Civil Procedure.

<sup>2</sup> "11. Soliciting Customers After Termination of Agreement. [¶] . . . ¶  
b) The parties hereto stipulate that any breach of the terms of this paragraph 11 is a material breach of this agreement. The parties further stipulate that in the event of any violation, breach or threatened violation or breach of this Paragraph 12 [sic], Sieg shall be authorized and entitled to seek and obtain from any court of competent jurisdiction preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies at law or in equity to which the injured party may be entitled."

“19. Attorneys’ Fees: in the event that there is a dispute under this Agreement, *the prevailing party shall be entitled to reasonable attorneys’ fees and court or arbitration costs.*” (Emphasis added.)

On April 26, 1995, Sieg filed a superior court action against appellants for breach of the employment contract. In response, appellants filed a petition for an order compelling arbitration pursuant to the above contract, and requesting a stay of the superior court action. The petition was granted on July 19, 1995. On or about February 16, 1996, a dismissal without prejudice was filed in Sieg’s action.

Much later, on or about April 18, 2000, Sieg and appellants submitted their controversy to arbitration. In the arbitration, Sieg sought monies improperly withheld from her, other damages, attorney’s fees and the cost of the arbitration. On April 19 and May 22, 2000, the arbitration was conducted in Los Angeles before William J. Adams, arbitrator. Both parties appeared and presented their proof.

On or about June 15, 2000, the arbitrator reached his decision, determining all issues submitted to him and awarding Sieg the total sum of \$41,675 against appellants. The arbitration award stated:

“The award is given as follows:

1. [Appellant] shall pay to Claimant<sup>3</sup> the sum of \$41,000.00.
2. The fees and expenses of the American Arbitration Association totaling \$5,116.50 shall be borne equally between the Parties. Therefore, [appellant] shall pay to Claimant the sum of \$675.00 to for fees previously advanced
3. The compensation of the Arbitrator totaling \$1,006.00 shall also be born equally between the parties

This Award is in full settlement of all claims submitted by either party against the other in this arbitration.”

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<sup>3</sup> “Claimant” refers to respondent herein, Helga Sieg.

On June 22, 2000, Wright submitted a letter requesting correction of the award to the American Arbitration Association (AAA). The request was in the form of a letter from counsel for Wright, Mr. Barry Orlyn, to AAA and the arbitrator, stating:

“[H]ereby makes a request for correction and statement of decision pursuant to C.C.P. 1284 and 632 with *the specific inquiry of how the figure of \$41,000 was arrived at* inasmuch as the claim the claimant requested only \$25,000 . . . . Specifically, the request is for a statement of decision to explain factual and legal basis for its determination and what factual calculations were or were not considered in arriving at that number and also what legal basis were utilized in that respect.” (Emphasis added.)

On June 28, 2000, the AAA transmitted Wright’s request for correction to the arbitrator with the following comments:

“Enclosed for your consideration is a copy of a letter dated June 22, 2000, from Mr. Orlyn, which constitutes an Application for Correction of Award. Also enclosed is a letter dated June 27, 2000 from Mr. Carter in response to Mr. Orlyn’s letter.

“Please send any correction to the Association in order that it be received by the above response date [July 10, 2000]. The Association will distribute it in the parties. It will be assumed that if you have not responded to the request by the above date, the request is denied.”<sup>4</sup>

The arbitrator never responded to Wright’s letter request for correction.

On July 18, 2000, Sieg filed a motion to confirm the arbitration award, to be heard in the trial court on August 16, 2000. On September 11, 2000, Sieg’s petition to confirm the arbitration award to a judgment was granted by the Los Angeles Superior Court. The order confirming the award stated:

“IT IS ORDERED, Adjudged and Decreed that:

1. Award of Arbitrators, Arbitration Tribunals of the American Arbitration Association, dated June 15, 2000, adjudging that Stuart A. Wright, individually and dba Stuart A. Wright & Associates Insurance Services owes Helga Sieg the sum of \$41,675 is

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<sup>4</sup> In the absence of an agreement, the time allowed for a response is 30 days from the date of the request. (§ 1284.)

confirmed in all respects and that judgment be entered in conformity therewith.

2. Costs are awarded to petitioner Helga Sieg pursuant to petitioner's Memorandum of Costs in the amount of \$291."

Notice of entry of judgment was filed on September 26, 2000. On the same date, Sieg filed a motion to determine the party prevailing on the contract and fix the amount of attorney's fees awardable as an item of costs. The notice stated:

"Notice is hereby given that . . . plaintiff . . . will move for an award in determining that she is the prevailing party for purposes of Civil Code section 1717 and then she is entitled to an award of attorney fees as an item of costs.

"This motion will be made on the ground that plaintiff . . . was successful in the arbitration against defendants . . . in that after the arbitration hearing in this matter an award was issued in favor of plaintiff. Said award was confirmed to a judgment on September 11, 2000. Plaintiff therefore is the prevailing party within the meaning of Civil Code section 1717, and California Rules of Court, Rules 26 and 870.2."

On October 10, 2000, Respondent filed an opposition to the request, giving the following reasons for his objection:

"[Appellant] objects to the jurisdiction of this court to hear the petition and motion pursuant to Code of Civil Procedure section 129.6, inasmuch as [Respondent] filed a Complaint in this action in this court on April 26, 1995 and Case # LSO31792 and in connection with which [Appellant] filed a petition for order compelling arbitration which was granted by this court on July 19, 1995 and which the [Respondent] filed a request for dismissal 'without prejudice' on/or about February 16, 1996 and therefore in accordance with Code of Civil Procedure section 129.6 'any such subsequent petition shall be filed in the same proceeding.'

¶ . . . ¶

"Inasmuch as [Respondent] is basing this claim for award of attorney's fees on the contract (not statute or law -- CCP. Sect. 1033.5 (10) (A)), all issues under the contract were submitted and decided by the Arbitrator who did not find a prevailing party and awarded no attorney's fees in the party and apportioned the costs equally between the parties. Consequently, whatever claims for attorney's fees and and/or costs based on contract existed when they were submitted and determined by the

Arbitrator on the contractual basis that was presented. There is no other unresolved basis under either contract, law or statute pursuant to which any attorneys fees and/or costs would be awardable; irrespective of whether any party would be determined as prevailing or not prevailing in this matter.” (Emphasis added in original.)

On October 20, 2000, Sieg’s motion for an order determining she was the prevailing party for purposes of Civil Code section 1717 was granted by the Los Angeles Superior Court. As a result of that determination, on October 27, 2000, the court confirmed the arbitration award and ordered an additional \$2,526 be added to Sieg’s underlying judgment of \$41,675. Thereafter on November 2, 2000, the trial court issued an amended order confirming the arbitration award and directing that:

“Proof having been made to the satisfaction of the court that the motion should be granted, and that the Order heretofore entered on September 11, 2000 should be amended to include the costs awarded this date, [¶] . . . [¶] Costs are awarded to petitioner . . . in the sum of \$2,526.00 . . . .”

Notice of entry of judgment was filed on September 26, 2000. Appellants filed a notice of appeal on November 9, 2000.<sup>5</sup> The notice stated the appeal was from: 1) the order entered on September 11, 2000 confirming the arbitration award; and, 2) from the order after judgment issued October 20, 2000 awarding attorneys fees.

#### JUDICIAL REVIEW OF ARBITRATION

Provided the arbitrator acts within the confines of his powers, judicial review of the results of the arbitration is quite limited. In *Moncharsh v. Heily &*

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<sup>5</sup> NOTICE OF APPEAL AND STAY [November 9, 2000] “Wright . . . appeals to the Court of Appeal for the Second Appellate District from the Judgment entered on/or about Sept. 11, 2000 in favor of . . . Sieg, pursuant to California Code of Civil Procedure Section 904.1 (a)(1) and from the Order After Judgment issued on/or about October 20, 2000 by the Los Angeles County Superior Court . . . .”

*Blasé* (1992) 3 Cal.4th 1, 28 (*Moncharsh*), the California Supreme Court stated what has come to be the general rule that “an arbitrator’s decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.” (*Id.* at p. 6.) The risk that the arbitrator may make a mistake is regarded as acceptable because “by voluntarily submitting to arbitration, the parties have agreed to bear that risk in return for a quick, inexpensive, and conclusive resolution of their dispute” and “the Legislature has reduced the risk to the parties of such a decision by providing for judicial review in circumstances involving serious problems with the award itself, or with the fairness of the arbitration process.” (*Id.* at pp. 11-13.)

However, *Moncharsh* acknowledges there are circumstances where judicial review is appropriate. These circumstances are limited to “cases in which there exists a statutory ground to vacate or correct the award.” (*Moncharsh, supra*, 3 Cal.4th at p. 28.) The legislature has provided the statutory grounds to correct or vacate an award in sections 1286.2<sup>6</sup> and 1286.6.<sup>7</sup>

“[T]he powers of an arbitrator derive from, and are limited by, the agreement to arbitrate. Thus, although an arbitrator generally enjoys substantial discretion to determine the scope of his or her contractual authority, courts are bound to uphold the parties’ express agreement to restrict or limit that authority. An appellate court conducts a de novo review, independently of the trial court, of

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<sup>6</sup> “(a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following: [¶] . . . [¶] (4) *The arbitrators exceeded their powers* and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.”

<sup>7</sup> “Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that: [¶] . . . [¶] (b) *The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted . . .*” (Emphasis added.)

the question whether the arbitrator exceeded the authority granted by the parties' agreement to arbitrate. *California Faculty Assn. v. Superior Court* (1998) 63 Cal.App. 4th 935." (6 Cal. Jur. 3d (2001 supp.) *Arbitration and Award*, § 80, p. 88.) The reviewing court gives substantial deference to the arbitrator's own assessment of his or her contractual authority.

## CONTENTIONS ON APPEAL

In his opening brief, appellant makes the following contentions:

1) "In view of the fact that . . . a request for correction and statement of decision pursuant to Code of Civil Procedure §1284 and §632 was forwarded to the Arbitrator on June 22, 2000" and not been responded to, Sieg's application to confirm the award on July 18, 2000 was premature as the request for correction was still pending; 2) The claim and award contained amounts beyond the statute of limitations and in excess of the amount claimed by Sieg; 3) The hearing was not conducted in accordance with section 1282.2(d) as the evidence was not given under oath and without the opportunity for cross examination; 4) No Arbitrator's Statement pursuant to section 1284 and section 632 was ever received; 3) The amended order awarding attorney's fees was in error because there was no written contract between the parties to the litigation and there was no provision for attorney's fees and costs as required by Civil Code section 1717. Therefore the Award of the Arbitrator should be reversed.

Respondent contends the appeal must fail: procedurally, because appellant never filed the requisite petition to vacate the award under section 1288; and on the merits, because the award was not limited to the sum of \$25,000, the motion to confirm the judgment was not premature, and because it is undebatable there was a contractual arrangement between the parties.

Appellant argues further in his reply brief there was no need to file a petition to correct the award per section 1288 as appellant was requesting the



award be vacated per section 1286.2. He adds the further contention that the arbitrator's original award didn't mention fees and his statement in the award that "this Award is in full settlement of all claims submitted by either party against the other party in this arbitration" meant that no further assessments or costs could be added to the award by the trial court.

## DISCUSSION

### *September 11, 2000 Judgment Affirming the Arbitration Award*

Section 1288 governs the time within which a challenge to an arbitration award may be filed. It requires that "[a] petition to vacate an award or correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner." Section 1284 provides that the arbitrator is to either deny the application or correct the award. However, "[if] no denial of the application or correction of the award is served within the 30-day period provided in this section, the application for correction shall be deemed denied on the last date thereof."

Section 1288.6 states that "If an application is made to the arbitrators for correction of the award, a petition [to confirm the award] may not be served and filed under this chapter until the determination of that application." Appellant's jurisdictional argument is that based on the interaction between these statutory requirements, respondent's petition to confirm the award filed on July 18, 2000, was premature as the 30-day period specified in section 1284 had yet to run.

Appellant's analysis is that in this case, the arbitrator issued his initial award on June 15, 2000. The letter request for correction of the award and for a statement of decision was dated June 22, 2000, transmitted to the arbitrator on June 28, 2000, and never responded to. Appellant's conclusion is that a petition to confirm could not have been filed until 30 days after the petition for correction was filed. Thus, if the June 22, 2000 date of the letter to AAA is the date of filing

of the “petition,” then the 30 days ran on July 22, 2000. If June 28, 2000, the date the letter was sent to the arbitrator is the controlling date, then the 30 days ran on July 28, 2000.

However the transmittal letter from AAA to the arbitrator stated:

“Please send any correction to the association in order that it is received by the above response date. The Association will distribute it to the parties. It will be assumed *that if you have not responded to the request by the above date [July 8, 2000], the request is denied.*” (Emphasis added.)

The notice of hearing on petition to confirm award was filed on July 18, 2000, 10 days after the response date selected by AAA. The arbitrator was requested to reply by July 8 and all parties were notified the arbitrator’s failure to respond would be considered a rejection of the request for correction. According to the AAA, the petition for correction of the award was therefore deemed denied on July 8, 2000. The application to confirm the award, filed on July 18, 2000 was therefore not premature. At best, there is technical violation of section 1284, in that the petition to confirm the award was filed earlier than 30-days from July 22, 2000.

Filing technicalities aside, a greater problem exists for appellant as his request for correction made only specific inquiry of how the figure of \$41,000 was arrived (inasmuch as the claimant requested only \$25,000) and for a statement of decision explaining the factual and legal basis for this determination and what factual calculations were considered in arriving at that number.

Assuming, without addressing whether the June 22, 2000 letter qualifies as a petition to vacate or correct the award under section 1268, we shall nevertheless evaluate appellant’s contentions. First and most importantly, the only complaints raised in the letter regarding the arbitrator’s award referred to the dollar amount of the award.

Appellant's remaining objections to the September 10, 2000 judgment that the claim and award contained amounts beyond the statute of limitation and in excess of the amount claimed by Sieg; the hearing was not conducted in accordance with section 1282.2(d) as the evidence was not given under oath and without the opportunity for cross examination; and no arbitrator's statement pursuant to section 1284 and section 632 was ever received, were not raised below and will not be considered.<sup>8</sup>

*October 20, 2000 Award of Attorneys' Fees and November 2, Amended Order Confirming Arbitration Award.*

The arbitrator issued his award on June 15, 2000. On September 11, 2000, the petition to confirm the award was granted. The petition was granted for \$41,000 and \$675 in costs. The court also stated "any other costs are to be put in a cost bill." Sieg filed a Memorandum of costs. On September 5, 2000, appellant filed an opposition to costs on the basis that the arbitration award "specified that the parties are to bear their own costs and attorneys' fees and therefore there is no prevailing party for costs to be awarded." The order confirming the arbitration award was filed on September 11, 2000, and awarded an additional \$291.00 in costs. The notice of ruling prepared by counsel for Sieg stated the award is confirmed in all respects and that "costs are awarded to Petitioner Helga Sieg pursuant to Petitioner's Memorandum of Costs."

Next, Sieg filed a motion to be determined the prevailing party within the meaning of Civil Code section 1717, and California Rules of Court, rules 26 and 870.2. As prevailing party, she requested payment for the "attorney fees to have the . . . arbitration award conformed to a judgment and in making the instant

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<sup>8</sup> If considered, they would fail based on the limited scope of appellate review of the arbitration process.

motion.” An attachment to the motion reflected that the only attorney’s fees requested were for billings accrued between June 16, 2000 and October 2000. On October 20, 2000, the motion to fix the prevailing party and determine fees was granted. Thereafter, an amended order dated November 2, 2000 added additional costs and attorney’s fees.

Appellant’s objections to this award of attorney’s fees is two fold. First, the request for attorney’s fees should have been filed directly with the arbitrator, as section 1292.6 requires “any . . . subsequent petition shall be filed in the same proceeding.” Appellant also argues because “the [a]rbitrator apportioned all claims equally between the parties and specifically stated that ‘this award is in full settlement of all claims submitted by either party against the other in this arbitration.’” Thus fees cannot be awarded.

We conclude that the motion to confirm the award was a subsequent petition in the same proceeding, was properly filed in the superior court.<sup>9</sup> It is obvious that the arbitrator himself does not hear motions to confirm the award. We also hold that the arbitrator’s statement in his award that “This Award is in full settlement of all claims submitted by either party against the other in this arbitration,” does not limit the authority of the trial court to hear motions properly before him for proceedings conducted in the trial court.

Appellant also argues that the trial court is limited by the arbitrator’s failure to find a prevailing party. The record does confirm that the arbitrator himself did not find a prevailing party and made no award of attorney’s fees. The consequence, according to appellant, is that the trial court may award no attorney’s fees for costs incurred bringing the motion to confirm the award.

Appellant cited no authority and we could locate none that addressed this specific issue. However, we conclude that, in an arbitration proceeding, when

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<sup>9</sup> Section 1285.

there are contractual grounds to award attorney's fees, a trial court may award such fees for the bringing of a successful motion to confirm the arbitration award based on the contractual claim. The fact that the arbitrator failed to designate a prevailing party in the arbitration does not remove this authority from the trial court. Appellant's argument would more appropriately be raised if the objection concerned attorney's fees granted by the trial court for fees incurred for conducting the arbitration itself.

Appellant also contends the amended order awarding attorney's fees was in error because there was no written contract between the parties to the litigation and thus no provision for the attorney's fees and costs required by Civil Code section 1717.

Generally speaking a party is entitled to recover attorney fees whenever there is a statutory authorization or an agreement between the parties. The 1988 employment contract between Sieg and appellant unambiguously states that the prevailing party in a dispute could recover these costs. Therefore the contract gave the trial court the jurisdiction to entertain this issue. Insofar as the trial court determined respondent was the prevailing party, no valid complaint can be raised.<sup>10</sup>

We find the trial court had the jurisdiction to award fees and the contract contained the language authorizing the award. The award of fees shall stand.

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<sup>10</sup> There is no evidence to support a contrary conclusion.

## DISPOSITION

The judgment of the trial court is affirmed. Costs on appeal to respondent.

*NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.*

COOPER, J.\*

We concur:

BOREN, P.J.

NOTT, J.

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\* Presiding Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.